

CHILD MAINTENANCE AND OTHER PAYMENTS ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5 - General

Section 55: Regulations and orders: general

437. This section has effect in relation to regulations under this Act, except Part 4 which relates to lump sum payments. It provides that, where the Secretary of State is empowered to make regulations, these are to be made by statutory instrument.
438. *Subsection (3)* provides that such regulations may include power to make incidental, consequential, transitional or saving provisions.
439. *Subsection (4)* provides that power to make regulations under this Act may be exercised:
- in relation to all cases to which it extends, in relation to those cases but subject to specified exceptions, or in relation to any specified cases or classes of case;
 - to make full provision for which it extends, the same or different provision for different cases or classes of case, or different provision for the same case or class of case. Provisions can be unconditional or subject to any specified conditions; and
 - to provide for a person to exercise discretion in dealing with any matter.
440. *Subsection (5)* provides that any regulations made under *section 6(1) or 6(4)*, which relate to fees, the first regulations made under *paragraphs 2(1), 3(1), 5(1) or (2), 6(1) or (3) or 7* of *Schedule 5* which relate to transfer of cases onto the new calculation rules, or any order made under *section 11(6)* which relates to the review of the status of the Commission, are subject to the draft affirmative resolution procedure.
441. *Subsection (6)* provides that any regulations not subject to the affirmative resolution procedure will be subject to the negative resolution procedure.

Section 56: General interpretation

442. This section sets out definitions for the purposes of the Act. *Subsection (1)* defines the 'Commission', for the purposes of this Act, as a body corporate to be known as the Child Maintenance and Enforcement Commission.
443. *Subsection (2)* sets out that for the purposes of amendments or repeals, where the Child Support Act 1991 has been amended by the Child Support, Pensions and Social Security Act 2000, for limited purposes only, the amendment will apply to both versions of the Act unless otherwise stated.

Section 57: Minor and consequential amendments

444. *Section 57* gives effect to *Schedule 7*, which contains minor and consequential amendments, as a consequence of the measures in the Act.
445. *Subsection (2)* provides regulation-making powers to the Secretary of State to make consequential provisions on this Act in subordinate legislation.

Section 58: Repeals

446. This section gives effect to the repeals set out in *Schedule 8*.

Section 59: Transition

447. *Subsection (1)* provides that until the functions of the Secretary of State are transferred to the Commission, all references to the Commission included in the Child Support Act 1991 will be treated as if they were references to the Secretary of State.
448. *Subsection (2)* gives the Secretary of State the power to make regulations to modify the textual amendments made in *Schedule 3* as necessary during any transitional period between the functions being transferred to the Commission and the repeal of section 6 (applications by those claiming or receiving prescribed benefit) and section 46 (reduced benefit decision) of the Child Support Act 1991.
449. *Subsection (3)* gives the Secretary of State power to make regulations modifying the effect of sections 6 and 46 before they are repealed. This is to enable changes to be made in preparation for the removal of compulsion for benefit claimants.
450. *Subsections (4)* and *(5)* ensure that some of the new provisions which the Act inserts into the Child Support Act 1991 will apply in relation to cases under the CSA 'old scheme'.
451. *Subsection (4)* provides that new *sections 20(5A), 32A, 32E, 32F, 32J, 32L, 32M, 41C to 41E, 43A, 49A, 49B and 49D* of the Child Support Act 1991 will have effect as if references to child support maintenance included maintenance due under an old scheme assessment.
452. *Subsection (5)* provides that new *sections 20(7A), 32A, 32C, 32E, 32F, 32J, 32L, 32M, 39B, 39H, 40, 40A, 40B and 49B* of the Child Support Act 1991 will have effect as if references to maintenance calculations included assessments made under the old scheme.
453. *Subsection (6)* provides that *sections 35, 36, 38, 39B, 39H, 39K, 40, 40B and 49D* of the Child Support Act 1991 will have effect as if orders made under section 33 of that Act had been made under *section 32M* of that Act. This ensures that any references to the liability orders in the 1991 Act include an administrative liability order made by the court after *section 32M* comes into force.
454. *Subsection (7)* enables an administrative liability order to be made in respect of unpaid child support maintenance, even though the time within which an application to the courts for a non-administrative liability order has expired.
455. *Subsection (8)* is a general power enabling the Secretary of State to make transitional provision or savings in relation to the coming into force of any provision under this Act.

Section 60: Financial provisions

456. *Section 60* provides that there shall be paid out of money provided by Parliament:
- any expenditure incurred by the Secretary of State or a government department in consequence of this Act; and
 - any increase attributable to this Act in the sums payable out of money so provided under any other enactment.

These notes refer to the Child Maintenance and Other Payments Act 2008 (c.6) which received Royal Assent on 5 June 2008

457. *Subsection (2)* provides that there shall be authorised the extinguishing in consequence of this Act of liabilities owed to the Crown under the Child Support Act 1991.

Section 61: Extent

458. This section sets out the territorial extent of the Act. The provisions of the Act extend to England, Wales and Scotland only, apart from the sections below which will also extend to Northern Ireland:

- *Sections 55, 57(2), 62 and 63*;
- *Paragraphs 4 to 6 of Schedule 6, and section 44* so far as relating to those paragraphs;

459. Any amendment or repeal made by the Act has the same extent as the enactment to which it relates.

Section 62: Commencement

460. *Sections 55, 59(8), 61 and 63*, come into force on Royal Assent. *Section 35* regarding Registered Maintenance Agreements: Scotland come into force on the day after the day of Royal Assent. The remaining provisions of the Act come into force on such days as the Secretary of State may by order appoint, apart from an order commencing *section 39* in England and Wales which may only be made with the consent of the Lord Chancellor. A commencement order may include such transitional provision or savings as the Secretary of State considers necessary or expedient in connection with bringing any provision of this Act into force.

Section 63: Citation

461. The Act may be cited as the Child Maintenance and Other Payments Act 2008.

Schedule 1: The Commission

462. This Schedule makes more detailed provision about the Commission including its structure and how appointments will be made.

463. The table below summarises the appointment procedures for the Commission and its staff as set out in *paragraphs 2 to 10* of this Schedule.

| | <i>Initial appointment by</i> | <i>Subsequent appointment by</i> | <i>Terms and conditions (including remuneration) set by</i> |
|---|---|--|--|
| Chair | Secretary of State | Secretary of State | Secretary of State |
| Chief Executive | Secretary of State | Commission with approval of Secretary of State | Initially by Secretary of State, and subsequently by non-executive functions committee with approval of Secretary of State |
| Non executive directors (other than Chair) | Chair with approval of Secretary of State | Chair with approval of Secretary of State | Chair with approval of Secretary of State |
| Executive directors (other than Chief) | Commission with approval of | Commission with approval of Secretary of State | Non-executive functions committee |

*These notes refer to the Child Maintenance and Other Payments
Act 2008 (c.6) which received Royal Assent on 5 June 2008*

| | <i>Initial appointment by</i> | <i>Subsequent appointment by</i> | <i>Terms and conditions (including remuneration) set by</i> |
|-------------------------------|---------------------------------------|--------------------------------------|---|
| Executive and other staff) | Secretary of State | | |
| Other staff | Commission | Commission | Commission |

464. *Paragraph 1* sets out that the Commission shall consist of:
- a person appointed to chair the Commission;
 - a chief executive of the Commission who will be known as the Commissioner for Child Maintenance;
 - one or more executive directors, appointed from the staff of the Commission; and
 - two or more non-executive directors, who must not be staff of the Commission.
465. *Paragraphs 3(3)* and *(4)* require that there are always more non-executive directors than executive directors.
466. *Paragraphs 4* and *5* make provision for the tenure of members of the Commission.
467. *Paragraph 5(2)* states that an executive director will no longer be a member of the Commission if they cease to be a member of its staff.
468. *Paragraph 5(3)* states that the Chair or any non-executive member will cease to be a member of the Commission if they become a member of its staff.
469. *Paragraph 6* stipulates that remuneration paid by the Commission to the Chair may be determined by the Secretary of State, as may any pension, allowances or gratuities paid to or in respect of the Chair.
470. *Sub-paragraph (3)* allows the Commission to pay compensation to the Chair upon early expiry of the appointment if the Secretary of State considers it appropriate.
471. *Paragraph 7* stipulates that remuneration paid by the Commission to a non-executive director, may be determined by the Secretary of State, as may any pension, allowances or gratuities paid to or in respect of a non-executive director.
472. *Sub-paragraph (3)* allows the Commission to pay compensation to a non-executive director upon early termination of the appointment if the Chair considers it appropriate. The amount of any such payment will be determined by the Chair, with the approval of the Secretary of State.
473. *Paragraph 8* requires the Chair to appoint one of the non-executive directors as a deputy chair.
474. *Paragraph 9* provides that the Commission will have a chief executive who will be a civil servant. The Secretary of State will make the initial appointment of the Chief Executive, and determine the terms and conditions with approval of the Minister for the Civil Service. Subsequent appointments will be made by the Commission with approval of the Secretary of State, on terms and conditions determined by the Commission with the approval of the Secretary of State and the Minister for the Civil Service.
475. *Paragraph 10* enables the Commission to appoint staff as it considers appropriate and determine their terms and conditions including remuneration with the approval of the Minister for the Civil Service.
476. *Paragraph 11* enables the Commission to establish committees and sub-committees (in addition to the non-executive functions committee established under *paragraph 20*). Committees and sub-committees established under this paragraph may include or be

*These notes refer to the Child Maintenance and Other Payments
Act 2008 (c.6) which received Royal Assent on 5 June 2008*

entirely made up of people who are not members of the Commission or the Committee by which it is established.

477. *Paragraph 12* enables the Commission to determine terms and conditions for committee members who are not Commission members or staff. This function will be exercised on behalf of the Commission by the non-executive functions committee.
478. *Paragraph 13* enables the Commission to set its own procedure and procedure of its committees.
479. *Paragraph 14* enables the Commission to authorise any member of the Commission, its staff or a committee member, to carry out its functions (apart from the non-executive functions) on its behalf.
480. *Paragraph 15* enables the Chair to delegate their functions of determining the terms and conditions, including remuneration, of non-executive directors, to any executive member of the Commission, any member of staff of the Commission, or subject to *sub-paragraph (2)*, any of its committees.
481. *Sub-paragraph (2)* prevents these functions from being delegated to any committee that has a non-executive director as a member, or if a committee is carrying out one of these functions on behalf of the Chair, the authority to do so must cease if a non-executive director becomes a member of the committee.
482. *Paragraph 16* makes provisions relating to how the common seal is authenticated and provides that any document which appears to be executed under the Commission's seal or signed on its behalf is to be presumed to be sealed or signed for the Commission unless it is proved otherwise. This provision does not apply in relation to Scotland.
483. *Paragraph 17* makes provision for the Secretary of State to fund the Commission out of money provided by Parliament through a grant in aid. *Sub-paragraph (2)* allows the Secretary of State to make such funding subject to conditions
484. *Paragraph 18* requires the Commission to keep proper accounts and produce an annual statement of accounts. A copy of each statement of accounts must be sent to the Secretary of State and the Comptroller and Auditor General. The Comptroller and Auditor General will report on, and certify, the statement which he will then return to the Secretary of State who will then lay the report and statement before Parliament.
485. *Paragraph 19* requires the Commission to keep its internal financial controls under review. This function is to be carried out by the non-executive functions committee.
486. *Paragraph 20* requires the Commission to establish a non-executive functions committee, and sets out the structure of, and functions that are to be carried out by, such a committee.
487. *Sub-paragraph (1)* of *paragraph 20* lists the functions to be carried out by the non-executive functions committee. These are:
- to determine the terms and conditions of the chief executive, with approval of the Secretary of State;
 - to determine the terms and conditions of the Commission's executive directors;
 - to determine the terms and conditions of committee or sub-committee members who are not members of the Commission or its staff; and
 - to monitor and audit the Commission's internal financial controls.
488. *Sub-paragraphs (2), (3) and (4)* stipulate that the non-executive functions committee must consist of at least three members who are non-executive members of the Commission, and that the Chair is prevented from being a chair of the non-executive functions committee.

*These notes refer to the Child Maintenance and Other Payments
Act 2008 (c.6) which received Royal Assent on 5 June 2008*

489. *Sub-paragraphs (5) and (6)* require the non-executive functions committee to produce a report on its own functions to include within the Commission's annual report to Secretary of State. The report should cover the same period as the Commission's report.
490. *Sub-paragraphs (7) to (10)* provide for the non-executive functions committee to be able to set up sub-committees to carry out its monitoring and audit and report functions. Sub-committees may include people who are not members of the Commission but may not include executive members or staff of the Commission.
491. *Paragraph 21* allows the Commission to do anything (other than borrow money) which is conducive or incidental to the carrying out of its functions. This would for example, enable the Commission to enter into contracts for supply of goods and services.
492. *Paragraph 22* sets out that the Commission's functions shall be exercised on behalf of the Crown. This effectively makes the Commission a Crown body. For the purposes of any civil proceedings arising out of those functions, sub-paragraph (2) makes provision for the Crown Proceedings Act 1947 and the Crown Suits (Scotland) Act 1857 to apply to the Commission. These Acts set out jurisdiction and procedure for legal proceedings involving the Crown, and the 1947 Act provides that the Crown may be liable in tort for the acts of its servants and agents.
493. *Paragraph 23* enables the Commission to carry out its functions even if there is not a full board in place or there has been a defect in an appointment.
494. *Paragraph 24* amends the Public Records Act 1958 to include the Commission so that records held by the Commission will fall within the definition of public records.
495. *Paragraph 25* amends the Parliamentary Commissioner Act 1967, to include the Commission as a department or authority subject to investigation.
496. *Paragraph 26* provides that the Commission will be required to fund the increased cost of providing pensions under section 1 of the Superannuation Act 1972 to its current or former staff.
497. *Paragraph 27* amends the House of Commons Disqualification Act 1975, disqualify members of the Commission from being members of the House of Commons.
498. *Paragraph 28* amends the Northern Ireland Assembly Disqualification Act 1975, to disqualify members of the Commission from being members of the Northern Ireland Assembly.
499. *Paragraph 29* ensures that the Commission is subject to the Freedom of Information Act 2000.
500. *Paragraphs 30 to 32* set out various definitions for the purposes of the Commission structure. Specifically that:
- executive members of the Commission are the Chief Executive and the executive directors;
 - non-executive members are members of the Commission who are not executive members;
 - references to staff of the Commission should be read as references to the Commissioner for Child Maintenance and other employees of the Commission
 - committees of the Commission are:
 - the non-executive functions committee and any of its sub-committees; and
 - any other committee or sub-committee set up by the Commission.

Schedule 2: Transfer of functions under subordinate legislation

501. This Schedule lists the functions under subordinate legislation which will transfer to the Commission. The following table sets out what this legislation refers to.

| <i>Number</i> | <i>Title</i> | <i>Explanation of functions transferred</i> |
|---------------|--|---|
| SI 1992/1812 | The Child Support (Information, Evidence and Disclosure) Regulations 1992 | These regulations confer functions allowing the Secretary of State to request information for child support maintenance purposes. These functions will be transferred to the Commission. |
| SI 1992/1813 | The Child Support (Maintenance Assessment Procedure) Regulations 1992 | The functions being transferred to the Commission are those relating to processing maintenance applications and making revisions and supersessions under the old scheme. These regulations also confer functions in relation to reduced benefit decisions which will remain with the Secretary of State. |
| SI 1992/1815 | The Child Support (Maintenance Assessments and Special Cases) Regulations 1992 | The functions conferred by these regulations relate to the determination of income, and the assessment of maintenance under the old scheme, and they will transfer to the Commission. |
| SI 1992/1816 | The Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations 1992 | These regulations confer functions allowing the Secretary of State to serve notices, make agreements and adjustments in cases where there have been arrears in payments or overpayments. These functions will transfer to the Commission. |
| SI 1992/1989 | The Child Support (Collection and Enforcement) Regulations 1992 | These regulations confer functions in relation to specification of timing and method of payment of maintenance and deduction from earnings orders. These functions will transfer to the Commission. |
| SI 1992/2643 | The Child Support (Collection and Enforcement of Other Forms of Maintenance) Regulations 1992 | These regulations allow the Secretary of State to bring proceedings for enforcement in England Wales and Scotland in relation to other forms of maintenance. The functions conferred will transfer to the Commission. |
| SI 1992/2645 | The Child Support (Maintenance Arrangements and Jurisdiction) Regulations 1992 | These regulations confer notification functions on the Secretary of State where there is a court order in force, which may be affected by a maintenance calculation. These functions will transfer to the Commission. |
| SI 1993/627 | The Family Proceedings Courts (Child Support Act 1991) Rules 1993 | These rules specify that the Secretary of State is to be the respondent to any appeal under section 20 of the Child Support Act 1991. The Commission will be the respondent following the transfer. |
| SI 1994/227 | The Child Support (Miscellaneous | These regulations confer functions on the Secretary of State in relation to how transition |

*These notes refer to the Child Maintenance and Other Payments
Act 2008 (c.6) which received Royal Assent on 5 June 2008*

| <i>Number</i> | <i>Title</i> | <i>Explanation of functions transferred</i> |
|---------------|---|--|
| | Amendments and Transitional Provisions) Regulations 1994 | from the old scheme to the new scheme is handled. These functions will transfer to the Commission. |
| SI 1995/1045 | The Child Support and Income Support (Amendment) Regulations 1995 | These regulations confer functions on the Secretary of State in relation to determining exempt and protected income. The functions will be transferred to the Commission. |
| SI 1996/2907 | The Child Support Departure Direction and Consequential Amendments Regulations 1996 | The functions conferred relate to determining departure decisions and will be transferred to the Commission. The functions conferred in regulation 47 are not transferred as these relate to departure direction applications that have been made prior to 2 December 1996. |
| SI 1999/991 | The Social Security and Child Support (Decisions and Appeals) Regulations 1999 | These regulations confer functions in relation to the making of decisions and appeals both in Child Support and Social Security cases. These functions will be transferred to the Commission insofar as they relate to Child Support. |
| SI 1999/1305 | The Child Support Commissioners (Procedure) Regulations 1999 | Regulation 20 of these regulations requires the Secretary of State to issue notices under section 28ZB of the Child Support Act 1991 (i.e. notices to stop dealing with an appeal or to deal in a particular way) in writing and to contain certain information. This requirement will be transferred to the Commission. |
| SI 1999/1510 | The Social Security Act 1998 (Commencement No.7 and Consequential and Transitional Provisions) Order 1999 | These regulations confer functions on the Secretary of State as a result of the changeover from child support officers. These functions will be transferred to the Commission. |
| SI 2000/3173 | The Child Support (Variations) (Modification of Statutory Provisions) Regulations 2000 | These regulations confer functions on the Secretary of State in relation to how variations should be dealt with in certain cases. Those functions will be transferred to the Commission. |
| SI 2000/3177 | The Child Support (Voluntary Payments) Regulations 2000 | These regulations confer functions on the Secretary of State in relation to determining whether a payment is a voluntary payment. These functions will be transferred to the Commission. |
| SI 2000/3186 | The Child Support (Transitional Provisions) Regulations 2000 | These regulations confer functions on the Secretary of State in relation to case conversion. The functions will be transferred to the Commission. |
| SI 2001/155 | The Child Support (Maintenance | The functions conferred by these regulations relate to the determination of income and |

These notes refer to the Child Maintenance and Other Payments Act 2008 (c.6) which received Royal Assent on 5 June 2008

| <i>Number</i> | <i>Title</i> | <i>Explanation of functions transferred</i> |
|---------------|--|--|
| | Calculations and Special Cases) Regulations 2000 | the calculation of maintenance under the new scheme and will transfer to the Commission. |
| SI 2001/156 | The Child Support (Variations) Regulations 2000 | These regulations confer functions in relation to the determination of variations applications. These functions will be transferred to the Commission. |
| SI 2001/157 | The Child Support (Maintenance Calculation Procedure) Regulations 2000 | The functions being transferred to the Commission are functions which relate to processing maintenance applications under the new scheme. These regulations also confer functions in relation to reduced benefit decisions. These functions will remain with the Secretary of State. |

Schedule 3: Transfer of child support functions

502. *Part 1*: makes the consequential amendments to the Child Support Act 1991 and the Social Security Act 1998, which are necessary as a result of provisions for the transfer of functions from the Secretary of State to the Commission.
503. *Part 2*: concerns transitional provision and savings.
504. *Paragraph 55* makes provision to ensure continuity in the transfer of functions from Secretary of State to the Commission.
505. At the time the Commission comes into being, anything which Secretary of State is in the process of doing in relation to any of the transferred functions may be continued by the Commission.
506. Any acts of the Secretary of State for the purpose of, or in connection with, any of the transferred functions prior to the transfer will be treated as acts of the Commission where this is necessary to ensure their continuing effect.
507. Documents, legislation etc which refer to the Secretary of State will be treated as referring to the Commission where it is necessary to make sense of them after the transfer of functions.
508. No Secretary of State act prior to the transfer will be invalidated by virtue of the transfer. However, the Secretary of State will remain liable for any acts or omissions of the Secretary of State prior to the transfer.

Schedule 4: Changes to the calculation of maintenance

509. This Schedule amends Part 1 of Schedule 1 to the Child Support Act 1991, and concerns changes to the calculation of maintenance.
510. The table below summarises the changes

| | <i>Old Scheme Child Support Act 1991</i> | <i>New Scheme Child Support, Pensions and Social Security Act 2000</i> | <i>New arrangements under the Child Maintenance and Enforcement Commission</i> |
|---------------------------------|--|--|--|
| Income to calculate maintenance | Net income | Net weekly income | Gross weekly income |

These notes refer to the Child Maintenance and Other Payments Act 2008 (c.6) which received Royal Assent on 5 June 2008

| | Old Scheme Child Support Act 1991 | New Scheme Child Support, Pensions and Social Security Act 2000 | New arrangements under the Child Maintenance and Enforcement Commission |
|-------------------------------|---|---|---|
| | Obtained from the child's parents or their employer | Obtained from the non-resident parent or their employer | Obtained from information supplied by HMRC |
| | Current income | Current income | Income from past periods |
| Existing private arrangements | Not taken into account for private arrangements, but taken into account where CSA is not empowered to act | Not taken into account for private arrangements, but taken into account where CSA is not empowered to act | Certain types of private arrangements will be taken into account for calculating maintenance liability |
| Basic rate levels | Not part of formula | 15 % 1 child 20% 2 children 25% 3 or more children | NRPs earning between £200 and £800 per week (and the first £800 per week for NRPs earning over that amount) 12% 1 child 16% 2 children 19 % 3 or more children NRPs earning over £800 per week (rate applies in relation to any amounts over £800 per week) 9% 1 child 12% 2 children 15% 3 or more children |
| Flat rate maintenance | Not part of formula | £5 per week | £7 per week |

511. *Paragraph 2* replaces reference to 'net' weekly income with 'gross' wherever it occurs in Part 1 of Schedule 1 to the Child Support Act 1991. This change means that where a calculation of liability is currently based on the net weekly income of a non-resident parent, in the future it will be based on their gross weekly income.
512. *Paragraph 3* replaces paragraph 2 of Schedule 1, to amend the basic rate of maintenance. Basic rate is a percentage of the non-resident parent's income and the changes will be:
- for one qualifying child – from 15% to 12%;
 - for two qualifying children – from 20% to 16%; and
 - for three or more qualifying children – from 25% to 19%.
513. *Sub-paragraph (2)* of paragraph 2 makes provision for a new rate for non-resident parents whose weekly income exceeds £800. The basic rate in these circumstances will

*These notes refer to the Child Maintenance and Other Payments
Act 2008 (c.6) which received Royal Assent on 5 June 2008*

be an aggregate of an amount resulting from the percentages above for the first £800, and an amount resulting from the percentages below for earnings over £800:

- for one qualifying child – 9%;
- for two qualifying children – 12%; and
- for three or more qualifying children – 15%.

514. *Sub-paragraph (3)* amends the percentage rate for non-resident parents who have one or more relevant other children. In these circumstances before the percentages above are applied, gross weekly income shall be reduced by a certain amount. Changes to these amounts will be:
- for one relevant other child – 15% to 12 %;
 - for two relevant other children – 20% to 16%; and
 - for three or more relevant other children – 25% to 19%.
515. *Paragraph 4* amends sub-paragraphs 3(3), 4(1) and 7(7) of Schedule 1. The effect of these provisions is to increase the amount of flat rate maintenance paid by non-resident parents in receipt of benefit, or earnings lower than £100 per week, from £5 to £7 per week and apply the same increase to the minimum amount of liability due under the basic or reduced rates.
516. *Paragraph 5* inserts a new *paragraph 5A* into Schedule 1 to the Child Support Act 1991. It also amends paragraph 1(1) of that Schedule, so that paragraph 1(1) is subject the new *paragraph 5A*.
517. The new *paragraph 5A* will makes provision for circumstances where a non-resident parent, in addition to their obligations under the statutory scheme, pays maintenance for a child or children under an existing private arrangement of a prescribed description or court order.
518. Currently, all children would normally need to be brought into the statutory scheme for them to be accounted for in a maintenance calculation. This change will mean that the Commission will consider any children who are subject to certain types of private maintenance arrangements, when calculating a basic or reduced rate maintenance liability under the new arrangements.
519. *Sub-paragraph (2)* of new *paragraph 5A* sets the weekly rate of child support maintenance for cases that fall within *paragraph 5A* at the greater of £7 per week and the amount calculated in accordance with *sub-paragraphs (3) to (5)*.
520. *Sub-paragraphs (3) to (5)* make provision for the calculation of child support maintenance where the non-resident parent is party to a qualifying private child support maintenance arrangement. Liability is calculated as though all the children supported by the non-resident parent, by virtue of a qualifying maintenance arrangement, were subject to the statutory scheme.
521. *Sub-paragraph (6)* makes provision for the types of arrangement that will be ‘qualifying maintenance arrangements’ for the purposes of *paragraph 5A*.
522. *Paragraphs 6 to 8* amend paragraphs 7(2), 8(2) and 9 of Schedule 1 to the 1991 Act, which allows for a reduction to basic or reduced rate where a shared care arrangement is in place. These changes will allow regulations to provide for a reduction on the basis of an agreement between the parents as to shared care. Regulations can also allow the Commission to work on the basis of an assumed pattern of shared care with a corresponding reduction on an interim basis. The intention is to use this where there is an agreement to share care, but no agreement as to the pattern or amount of shared care.

These notes refer to the Child Maintenance and Other Payments Act 2008 (c.6) which received Royal Assent on 5 June 2008

523. *Paragraph 9* amends paragraph 10 of Schedule 1 to the Child Support Act 1991 to provide that, regulations about the manner in which gross weekly income is determined may provide that gross weekly income may be income from a past period.
524. This change will mean that where currently weekly income is based on information currently obtained from the non-resident parent, in the future it can be taken directly from information supplied by HMRC and based on previous income tax years.
525. *Paragraph 10* increases the maximum amount of weekly income that will be taken into account for calculating maintenance, from £2,000 to £3,000 per week.

Schedule 5: Maintenance calculations: transfer of cases to new rules

526. This Schedule provides for arrangements to be made with regard to existing cases moving onto the new calculation rules. The Commission may require the parties to choose whether to remain in the statutory scheme under the new calculations rules. If they do not, then liability stops accruing under the scheme.
527. *Paragraph 1* sets out that the Commission may require CSA clients on both existing CSA schemes, to choose whether to remain in the statutory scheme.
528. *Paragraph 2* enables the Secretary of State, by regulations, to make provision about the power referred to in *paragraph 1*. The regulations may include, for example, provision about timing, stages and in which order cases will be transferred.
529. *Paragraph 3* provides regulation-making powers to the Secretary of State in relation to how the parties exercise their right to choose whether or not to stay in the statutory scheme, and how they apply to stay within the statutory scheme.
530. *Paragraph 4* stipulates that where either of the two parents chooses to remain in the statutory scheme, the case will remain in the statutory scheme, even if the other parent wishes to opt out.
531. *Paragraph 5* sets out the effect of the Commission requiring the parties to exercise a choice under *paragraph 1*. If a calculation (or assessment under the old scheme) is in force, then maintenance will stop accruing from a date specified in regulations. If there is an outstanding application for maintenance calculation or assessment, it may be made only in respect of the period up to that date.
532. *Paragraph 6* provides regulation-making powers to the Secretary of State in relation to a person's decision not to leave the statutory scheme. These regulations may include provision about how an application to stay in the statutory scheme is determined, how the Child Support Act 1991 in relation to a maintenance calculation is to apply to such an application, and whether any adjustment is required to the resulting calculation. They may also include provision for treating an existing application as withdrawn where no maintenance calculation or assessment has been made.
533. *Paragraph 7* sets out definitions for the purposes of moving of cases to the new calculation rules.

Schedule 6: Use of information

Powers in relation to use of information

534. This Schedule sets out gateways for the supply of information between the Commission and certain government departments.
535. *Paragraph 1* enables information held in relation to child support functions by the Commission, or a person providing services to the Commission, to be used by or disclosed to any person providing services to the Commission for use for the purpose of functions relating to child support.

*These notes refer to the Child Maintenance and Other Payments
Act 2008 (c.6) which received Royal Assent on 5 June 2008*

536. *Paragraph 2* allows information relating to income tax, contributions, tax credit, child benefit or the guardian's allowance, held by HMRC or a person providing a service to them, to be disclosed to the Commission or any person providing services to the Commission for use for the purpose of functions relating to child support.
537. *Paragraph 3* concerns information held by the Secretary of State, or a person providing services to the Secretary of State, which relates to social security, or employment or training. It enables such information to be disclosed to the Commission or a person providing services to the Commission, for use for the purpose of functions relating to child support.
538. *Paragraph 4* concerns information held for purposes relating to social security, child support or employment training, by the Northern Ireland Department or a person providing services to them. It enables such information to be disclosed to the Commission or a person providing services to the Commission, for use for the purpose of functions relating to child support.
539. *Paragraph 5* concerns information held for use for the purpose of functions relating to child support, by the Commission or a person providing services to it. It enables such information to be disclosed to the Secretary of State, HMRC or the Northern Ireland Department or a person providing services to any of them, for purposes of certain functions.
540. *Paragraph 6* defines the Northern Ireland Department as meaning the Department for Social Development in Northern Ireland or the Department for Employment and Learning in Northern Ireland.

Schedule 7: Minor and consequential amendments

541. This Schedule contains amendments which are minor or consequential on the measures in the Act. In particular the Schedule provides for amendment to the Child Support Act 1991, the Social Security Administration Act 1992, the Social Security Act 1998 and the Tax Credits Act 2002.
542. Section 20 of the Child Support Act 1991 is amended to provide for an appeal to the appeal tribunal against the making of a liability order by the Commission under the new *section 32M*. An appeal will lie on limited grounds, that is, that the person has not failed to pay an amount of child support maintenance or that the amount of the liability order exceeds the amount owing. In deciding any appeal against the making of a liability order, the appeal tribunal will not be able to question the maintenance calculation in relation to which the order is made.
543. Section 50 of the Child Support Act 1991 is amended so that the offence of unauthorised disclosure of information covers members and staff of the Commission, employees of those providing services to the Commission and those employed in employment of a kind prescribed in regulations. The latter could include, for example, employment with a credit reference agency.
544. Section 108 of the Social Security Administration Act 1992 is amended to include the definition of a maintenance order. The equivalent definition is currently contained in section 107 of that Act, but the repeal of this section is provided for in *Schedule 8* to this Act. Section 121E is also amended in consequence of the transfer of functions relating to child support from the Secretary of State to the Commission. Information supplied by HMRC to the Secretary of State will no longer be provided for the purposes of functions relating to child support. This information will now be provided to the Commission.
545. Section 3 of the Social Security Act 1998 is amended to remove references to child support pertaining to the use of information held by the Secretary of State or the Northern Ireland Department.

*These notes refer to the Child Maintenance and Other Payments
Act 2008 (c.6) which received Royal Assent on 5 June 2008*

546. **Section 81** is amended to remove the responsibility for the Secretary of State to report on the standard of decisions made following appeals regarding child support maintenance. This responsibility will fall to the Commission.
547. Schedule 5 to the Tax Credits Act 2002 is amended in consequence of the transfer of functions relating to child support from the Secretary of State to the Commission. Information supplied by HMRC to the Secretary of State will no longer be provided for the purposes of functions relating to child support. This information will now be provided to the Commission.

Schedule 8: Repeals

548. This Schedule provides for repeals consequential on the provisions of the Act.